

## Contract

Solicitation # SCC050001-A1

### Document Information

Type:	Supplier	Amendment:	Yes	Amend #:	1
Requisition #:	ADSM-6BCTGN	Solicitation #:	SCC050001-A1	Contract #:	SCC050001-A1-1-A1
PO Assigned:	Karie Ingles/ADSM-6A4SXZ	Date Completed:	07/31/2006		
PM Assigned:	Larry Tweet/ADSM-6A4SXZ	PA Assigned:	Larry Tweet/ADSM-6A4SXZ		
Supplier Name:	SNYDER PROMOTIONAL PRODUCTS	Proposal #:	ADSM-6C4P4B		
Gov't Entity:	Strategic Contracting Centers	Type:	Statewide		
Process Status:	Complete	Status:	Complete		
Total/Not to Exceed	0	External Contract:			
Cost:					

### Contract Information

NOTE: As a State Agency, you are only allowed to use contracts that are either Statewide Contracts or contracts that are assigned to your Agency. You are not allowed to use other Agency Contracts.

Start Date:	8/1/06	End Date:	7/31/07
Term:	1 Year(s)	FOB:	Destination
Payment Terms:	NET 30	Delivery:	30A.R.O. Days
Contract Extension Allowed		Max Extension:	4 Year(s)

### Amendment Information

Amendment # 1

Per the Special Terms and Conditions, Contract Extension, this contract is here by mutually extended August 1, 2006, through July 31, 2007.

#### Contract Reassignment

N/A

#### Contractor Amendment Approval

Contract Amendment approved by PAUL SNYDER/000004804 (7/12/06 2:46:38 PM)

### Solicitation Information

Title: Length of Service Awards and Recognition Awards Items Type: RFP

#### Description:

The Arizona Department of Transportation (ADOT), on behalf of the State of Arizona (hereinafter referred to as the State), is seeking to establish a comprehensive statewide term contract for Length of Service and Recognition Award Items and Services, for use by all State of Arizona agencies, accounts, and boards and participating political subdivisions (a.k.a. eligible agencies) including, but not limited to; Department of Administration, Department of Health Services, Department of Revenue, Department of Corrections, etc. Prospective Offerors shall demonstrate the capabilities of the areas contained within the Scope of Work for use by multiple eligible agencies having delivery locations throughout the State (Statewide Contract Requirement). For questions relating to the solicitation or procurement process, please contact Karie Ingles at (602) 712-8505 or via email at [kingles@azdot.gov](mailto:kingles@azdot.gov). For questions relating to the State's SPIRIT Automated eProcurement System, please contact the help desk at (602) 542-7600 or (602) 542-9137.

**Contract**  
**Solicitation # SCC050001-A1**

**Special Instructions**

**Attachment(s) to be Submitted**

Offerors shall complete and include, at a minimum, the following attachments with their proposal:

1. Offerors Prior Experience
2. Pricing
3. Proposed Method of Performance
4. Return Policy
5. Subcontractors List
6. Telephone Ordering Support

Offerors shall save each attachment, complete the form and save changes. Each attachment will be required to be added the the offerors proposal separately.

**Catalog/Price List Discounts**

The Offeror is to provide prices based on a percent of discount percent (%) off of their most recent formally published catalog/brochure(s) for products/service offered. A copy of all referenced price schedules/catalogs (hardcopy and/or electronically) shall be submitted with the proposal. Failure to include formally published price schedules/catalogs may have a negative impact on the evaluation of the Offeror's proposal.

Prices calculated by the Offeror shall be entered on the price sheets provided, see Price Sheet and the attached Pricing document. Prices entered on individual line items shall be computed using the same discount offered by the Offeror. For all items specifically listed on the price schedule, the offeror should indicate the net price (after discount), the model (item) number, the applicable catalog/brochure and the page number on which the item may be found.

The items shown on the Price Sheet and the attached Pricing document, provided herein are identified as high use items. However, the State reserves the right to make comparative evaluations of any non-listed items contained in an Offeror's formally published catalog/brochure.

In the event of a contract award, the contractor shall furnish all awarded items/categories contained in their formally published catalog/brochure at the discount percent (%) offered.

Additionally, the contractor(s) shall provide, at no cost to the State, copies of the referenced catalog(s) to any eligible agency/entity upon request.

**Catalog/Price List Electronic Version, Submit with Proposal**

1. For the purpose of this solicitation, an established catalog price means the price included in a catalog, price list, schedule or other form that: Is regularly maintained by a manufacturer, distributor or contractor. Is either published or otherwise available for inspection by customers. Is one that states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
2. Offeror(s) are to submit with their proposal, electronic versions of the catalog/price lists being offered in either of the following formats (see special terms and conditions section for additional electronic catalog/price list requirements).
  - 2.1. Internet versions available through a Universal Resource Locator (URL) link, or;
  - 2.2. As a Portable Document Format (pdf) file.
3. Such catalog/price lists shall:
  - 3.1. Contain a comprehensive selection of products from individual manufacturers within an established solicitation group.
  - 3.2. Be those that contain prices that are the basis for those discount (percents %) from list price (DLP) offered and accepted by the State (see catalog/price list discount section).
    - 3.2.1. Although not required to be submitted with the offer, hard copy catalog/price lists copy catalogs shall be made available upon request.
4. Failure to submit electronic copies of catalog/price lists being offered with the proposal may result in the proposal being not susceptible for award.
5. Upon award of a contract(s), it is at the discretion of Enterprise Procurement Services (EPS) or the Arizona Department of

Transportation (ADOT), to have the ability to maintain the contractor's electronic catalog/brochure/price list data or provide electronic links to it through the SPIRIT or ADOT web-site. Regardless of the number and types of links to the contractor's electronic catalog/brochure/price list, the contractor shall ensure that customers are able to access one, and only one, version of contracted catalog/brochure/price list.

Upon award and during the term of the contract the contractor shall not alter, modify or update either the electronic or hard copy versions of the catalog/price list without prior approval by the State (see revised replacement catalog price/list provision for additional requirements). Hard copy versions shall be made available to all requesting agencies. All associated cost shall be borne by the contractor.

**Catalog/Price List, Multiple or Alternate Submissions by a single Offeror**

1. OFFERORS ARE ENCOURAGED TO OFFER MULTIPLE PRODUCT LINES.

1.1. Offeror(s) electing this option should;

1.1.1. Complete the all appropriate fields contained in the solicitation price sheet areas for products being offered as primary, then;

1.1.2. Click on the create alternate button as this will create alternate line items for the offeror to complete for additional or alternate product offerings.

**Current Products**

All offers submitted in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.

**Descriptive Literature 01**

All offers must include complete manufacturer's descriptive literature regarding the merchandise they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may have a negative impact on the evaluation of the Offeror's proposal.

**Descriptive Literature 02**

Pursuant to Special Terms and Conditions, Descriptive Literature, Offerors shall submit all descriptive literature, catalogs, brochures, etc.

If electronic versions are not available to be submitted with offer, please send hardcopies of catalogs/brochures/etc., to:

Arizona Department of Transportation  
Procurement Group, ATTN: Karie Ingles, CPPB  
1739 West Jackson Street, Suite A, MD 100P  
Phoenix, Arizona 85007

Hardcopy of catalogs/brochures/etc., shall be submitted no later than 3:00 P.M. MST Arizona Time on May 20, 2005.

DO NOT SUBMIT YOUR OFFER WITH THE DESCRIPTIVE LITERATURE. Electronic submittal of offer, at [www.spirit.az.gov](http://www.spirit.az.gov), is required.

**Discussions**

As provided by A.A.C. R2-7-331, discussions may be conducted with Offerors who submit offers determined to be reasonably susceptible of being selected for award. If discussions are conducted pursuant to R2 7 331, the Department shall issue a written request for best and final offers. Award may be made without discussions, therefore, offers shall be submitted complete and on most favorable terms.

**Electronic Documents**

This solicitation document is provided in an electronic format. Any unidentified alteration or modification to any solicitation documents, to any attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. In those instances where modifications are identified, the original document published by the State shall take precedence. As provided in the Uniform Instructions to Offerors, offerors are responsible for clearly identifying any and all changes or modifications to any solicitations document upon submission to the State.

**Eligible Agencies (Statewide)**

Any contract resulting from this solicitation shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes 41-2632.

**Evaluation**

In accordance with the Arizona Procurement Code 41-2534: Competitive Sealed Proposals, awards shall be made to the responsible offeror(s) whose proposal(s) are determined in writing to be the most advantageous to the State based upon the

evaluation criteria.

As part of its final selection from among the highest ranked firms, the Department reserves the right to:

- a. Contact a reasonable number of references from among those provided by the Offeror, as requested in Attachment 3.
- b. Request oral presentations with no less than 72 hours notice. Presenters from the firms must include key members who will serve as the contact person(s).

An evaluation committee will evaluate and rank the offers, based on the following criteria listed below in descending order of importance.

Note:

Evaluation Criteria #1 – Well-defined and Comprehensive Approach and Methodology shall include the following factors:

- a. Electronic Ordering System;
- b. Spend Management Program;
- c. Cumulative Volume Discount or Rebate Program;
- d. Single Bulk Purchase or Case Lots and Special Educational Programs;
- e. State of Arizona Purchasing Card (P-Card) Program
- f. Woman-Owned/Small Minority-Owned Business Enterprise Subcontract Program;
- g. Set-Aside Products Program;
- h. Contractor Support;
- i. Data Management and Reporting Program (incorporated in Special Terms and Conditions).

Evaluation Criteria #6 – Overall Responsiveness to the RFP shall include the following factors:

- a. Thoroughness of responses and completion of forms in manner specified;
- b. Overall quality and responsiveness of offer;
- c. Conformance to Special Terms and Conditions and Specifications

Evaluation Criteria #7 – Cost, has been included as an evaluation criteria for the purpose of the functionality of the application. Cost will not be evaluated twice.

1. Well-defined, comprehensive approach and methodology
2. Administration & Support (including Statewide Coverage)
3. Quality, Workmanship and Warranty of Products/Packaging
4. Proposed Costs (including Discount Programs)
5. Past services of similar scope (including references)
6. Overall responsiveness to the RFP
7. Cost

#### **Exceptions**

Offerors shall indicate any exceptions they have taken to the instructions, terms, conditions or other requirements of the solicitation.

#### **Offerors Responsibility**

The offeror is cautioned that it is the offerors sole responsibility to submit information related to the evaluation categories and that the State of Arizona is under no obligation to solicit such information if it is not included with the offerors proposal.

Failure by the offeror to submit such information may cause an adverse impact on the evaluation of the offerors proposal.

#### **Offshore Performance of Work Prohibited**

Due to security and identity protection concerns, all services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by all subcontractors at all tiers. Offerors shall declare all anticipated offshore services.

#### **Payment Discounts**

Offeror(s) should indicate any prompt payment discount terms in the payment terms section of the solicitation.

#### **Product Return**

Any agency utilizing any resulting contract may return any or all unused product(s), in there original container or package, to the contractor for exchange or credit at the current contract price during the term of this contract with no restocking fee. All product(s) will be returned in a timely manner during the period of the contract. Proof of purchase will be attempted but shall not be required. A full refund shall be issued for all unused product(s) returned to the supplier up to ninety (90) days after contract expiration. A credit may be issued only if there is an existing sale pending. Credit to any Agency account will not be accepted after contract expiration. The supplier will issue a check for full reimbursement to the Agency.

Special order items may be returned with a restocking fee.

#### **Proposals: SPIRIT Submission Requirement**

In accordance with the Uniform Instructions 3.1, Forms: No Facsimile, Telegraphic or Electronic Mail Offers; proposals to this solicitation shall be submitted in an acceptable electronic format, as described herein, using the State's online eProcurement application SPIRIT. Submission of offers by means other than the SPIRIT system will not be accepted. Potential offerors with

questions in this regard shall contact the State Procurement Office prior to the solicitations due date and time.

**Purpose**

In accordance with the Arizona Procurement Code, ARS 41–2501 et seq., the Arizona Department of Transportation on behalf of the State of Arizona, intends to establish a comprehensive statewide term contract for Length of Service and Recognition Award Items and Services, for use by all State of Arizona agencies/political subdivisions.

**Questionnaire Section**

Offeror(s) should complete the entire questionnaire section of the Request for Proposal. The offerors responses should be in the form of a brief written narrative demonstrating the Offerors ability to satisfy the Scope of Work. The narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The use of technical language should be minimized and used only to describe a technical process.

Offerors shall save and complete all attachments and submit all documents with their electronic proposals.

**References**

Offeror(s) should submit a list of three business references including business name, address, contact name and telephone numbers in the appropriate area of the solicitation. In–state and/or government references are preferred. Failure to submit this information with the bid may have a negative impact on the evaluation of the Offeror?s proposal. See attached Reference document.

**Required Review**

Offerors should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be made in writing and received by the State at least seven (7) days prior to the proposal?s due date. Protests based on any omission or error, or on the content of the solicitation, may be disallowed if these faults have not been previously brought to the attention of the State as required herein.

In the event of a contract awarded, no plea of ignorance of conditions that exist, or may hereafter exist, or of difficulties that may be encountered in the provision of services under the contract will be accepted as an excuse for any failure or omission on the part of the contractor to fulfill in every detail all of the requirements of the contract, nor accepted as a basis for any claims for extra compensation.

**Samples**

Samples of items, when requested, must be submitted within a reasonable period of time, unless otherwise specified by the State. Samples shall be furnished at no expense to the State and shall be identified as to the supplier, manufacturer, part/item number, model number, type, grade, applicable stock number, etc. If not destroyed by testing, samples will be returned at contractor?s request and expense. If no instructions are received for their return, samples will be discarded 30 days after award date.

**Value In Procurement**

Through the Governor?s Efficiency Review initiative, the State Procurement Office has established the Value in Procurement (VIP) Committee. A major initiative of the VIP Committee is to aggregate specific procurements to increase efficiency and cut costs. The VIP Committee has designated the Arizona Department of Transportation as a Strategic Contracting Center (SCC) for Length of Service and Recognition Award Items and Services. Any contract resulting from this RFP shall become a statewide contract for use by all State agencies, and optional for cities, counties and school districts and other political subdivisions. State agencies that currently have individual contracts in place will be phased in under this contract when their contracts expire.

**Warranty**

Pursuant to Special Terms and Conditions, Warranty, Offerors shall indicate the exact conditions, limitations and duration of their warranty.

# Contract

Solicitation # SCC050001-A1

## Special Terms and Conditions

### Billing – Commodities

1. All billing notices or invoices shall be sent to the eligible using agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information.

- 1.1. Name and address of the contractor;
- 1.2. Both the contract number and contract release/purchase order number;
- 1.3. The contractor's federal tax identification number;
- 1.4. The contractor's remittance address;
- 1.5. A description of the goods or services provided;
- 1.6. Quantity and delivery/service timeframe;
- 1.7. Itemized (if applicable) and total invoice pricing. Pricing shall be the contract price inclusive of any all-applicable discounts.

### Cancellation Of Possession Of Weapons On State Property

This contract may be cancelled if contractor or any subcontractors or others in the employ or under the supervision of the contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on State property. Such property includes owned or leased office building, yards, parking lots, construction sites or State owned vehicles.

Further, if the contractor or any subcontractors or others in the employ or under the supervision of the contractors or subcontractors are asked by a State official to leave State property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, Criminal trespass in the third degree; classification.

### Catalogs/Contract Price Listing

The Offeror is to provide prices based on a percent of discount percent (%) off of their most recent formally published catalog/brochure(s) for products/service offered. A copy of all referenced price schedules/catalogs (hardcopy and/or electronically) shall be submitted with the proposal. Failure to include formally published price schedules/catalogs shall have a negative impact on the evaluation of the Offeror's proposal.

In the event of a contract award, the contractor shall furnish all awarded items/categories contained in their formally published catalog/brochure at the discount percent (%) offered.

Additionally, the contractor(s) shall provide, at no cost to the State, copies of the referenced catalog(s) to any eligible agency/entity upon request.

### Catalog/Price list, Maintenance (electronic/hard copy)

1. The contractor shall provide and maintain electronic and hard copy versions of all contracted catalog/brochure/price lists during the contract term. Electronic versions shall be in either of the following formats.

- 1.1. Internet versions available through a Universal Resource Locator (URL) link, or;
- 1.2. Portable Document Format (pdf) versions attached to the contract.

No alterations, amendments or updates shall be allowed without prior approval by the State. This is covered in more detail in Section 1, Paragraph 2, Scope of Services.

At the discretion of Enterprise Procurement Services (EPS) and the Arizona Department of Transportation (ADOT), these agencies may have the ability to maintain the contractor's electronic catalog/brochure data or provide electronic links to it through the SPIRIT and/or ADOT websites. Regardless of the number and types of links to the contractor's electronic catalog/brochure, the contractor shall ensure that customers are able to access one, and only one, version of contracted catalog/brochure.

Upon award and during the term of the contract the contractor shall not alter, modify or update either the electronic or hard copy versions of the catalog/brochure without prior approval by the State (see revised replacement catalog price/list provision for additional requirements). Hard copy versions shall be made available to all requesting agencies. All associated cost shall be borne by the contractor.

### Changes (Fixed Price)

The State reserves the right to revise the delivery and schedule and make other changes within the general Scope of Work as may be deemed necessary to best serve the interest of the State. All changes shall be documented by formal

amendments to the contract.

### **Contraband**

Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

### **DEFINITION – A.R.S. § 13-2501**

Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

### **PROMOTING PRISON CONTRABAND – A.R.S. § 13-2505**

1. A person, not otherwise authorized by law, commits promoting prison contraband:

A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or

B. By knowingly conveying contraband to any person confined in a correctional facility; or

C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.

2. Promoting prison contraband is a Class 5 felony.

### **Contract Administration**

Following award, the contractor shall contact the Arizona Department of Transportation (ADOT), Procurement Group for guidance or direction in matters of contract interpretation or problems regarding the terms, conditions or scope of the contract. Only the Contract Officer or his/hers authorized designee is authorized to change or amend the specific terms, conditions or provisions of the agreement.

Contract Officer: Karie Ingles, CPPB

Phone (602) 712-8505

Fax: (602) 712-8647

### **Contract Extension**

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

The Department reserves the right to unilaterally extend the period of any resultant contract for thirty-one (31) days beyond the stated expiration date.

### **Contract Reports**

The contractor shall be required to furnish the following reports to the requesting agency against this contract on a quarterly basis at no additional cost to the State:

1. Total contract usage reports: Identifying all using agencies and total dollar volumes purchased by each using agency during the reporting period.

The contractor shall provide quarterly itemized usage reports detailing all acquisitions against this contract by location and cost upon request.

2. Diversity Report: Identifying products sold during the reporting period that was available from women, small, and/or minority owned business enterprises along with total dollars purchased.

3. Women Owned/Small Minority Owned Business Enterprise Subcontract Program Report: Identifying subcontractor(s) utilized, percent of overall deliveries made and total dollars utilized during the reporting period.

Reports shall be due at the end of each three (3) month contract period to be furnished to the contract officer of record no later than fifteen (15) days after the end of each three (3) month contract period. Reports shall be submitted in electronic format (CD, excel, etc.)

The information contained in these contract reports and the accurate and timely submission thereof are critical components used by the State. Failure by the contractor to submit accurate and timely contract reports against this contract may be cause for cancellation of the contract.

**Delivery (Days)**

Delivery for stock items shall be made within thirty (30) days of receipt of a contract release order/purchase order. Delivery for custom items shall be sixty (60) days of receipt of a contract release order/purchase order.

**Delivery (Minimum)**

The minimum dollar value of orders to be issued under this contract is \$50.00. For orders less than the minimum, the charge shall be F.O.B. Destination – Freight Prepaid with the transportation charges added as a separate item on the invoice. Freight C.O.D. is not allowed.

**Discount Rates**

1. The contractor(s) shall disclose and honor all applicable discount rates contained herein (i.e. discount from list price, electronic ordering systems, annual volume discount program, Single bulk purchase, State Agencies/Political Subdivisions purchasing card (P-Card) Program, special educational and prompt payment discounts). Disclosure shall, at a minimum be done using the following methods:

- 1.1. Prominently displayed on electronic media supplied by the contractor and approved by the State;
- 1.2. Prominently displayed on all written price communications, order conformations and invoice activities;
- 1.3. Disclosed during all verbal correspondence with an eligible ordering agency.

Failure to disclose and honor all applicable discount rates may result in contract cancellation or any other remedy available by law, inclusive of the issuing of credits or refunds to all affected agencies.

**Electronic Ordering Systems**

Systems that provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting available through a contractor's Electronic Data Interchange (EDI) system or secured internet/web portal. This provision shall only apply to those contractors who have such systems available under the contract. The contractor's system, at a minimum shall:

1. Be made available to all eligible agencies. Utilization shall be the sole discretion of the eligible agency;
2. Be implemented with a training program to the agency on how to use the system;
3. Be maintained by the contractor;
4. Be a secure connection;
5. Not allow for purchase orders to be placed for non-contract or excluded items.
6. Provide multiple or individual access to the system (agency elect);

Eligible agencies may elect, at their own discretion to utilize the contractor's electronic ordering system. Should an eligible agency elect to use the system they shall do so by formal request to the contractor.

Upon receipt of the request the contractor shall have the system fully installed and functioning within 30 day from receipt of the request, or as mutually agreed upon between the agency and the contractor.

Initial training shall either be performed upon completion of the installation or as mutually agreed upon between the agency and the contractor.

Upon contract termination or at the request of an agency the contractor shall uninstall all features of the system within 30 days.

Contractor's not having electronic ordering systems at time of award but who may wish to offer such, may do so at any time during the contract period by providing a written request to the contract specialist of record. Systems offered shall meet all criteria established above. Incorporation of the offered system shall be in the form of a contract amendment.

All cost associated with installation, training, maintenance, support and removal of such systems shall be borne by the contractor.

**Eligible Agencies (Statewide)**

This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, Enterprise Procurement Services as required by Arizona Revised Statutes 41-2632.

**Estimated Quantities (Considerable)**



This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, Enterprise Procurement Services as required by Arizona Revised Statutes 41-2632.

#### **Inclusive Offerors**

Offerors are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. This could include subcontracts for a percentage of shipping/delivery, product packaging. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.

#### **Insurance**

##### **Indemnification**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### **INSURANCE REQUIREMENTS**

Within five (5) calendar days after tentative award notification, the Offeror shall submit a copy of the attached Certificate of Insurance, Exhibit 1, or a State approved alternate form showing insurance in the following amounts to:

Arizona Department of Transportation, Procurement Group  
ATTN: Karie Ingles, CPPB  
1739 West Jackson Street, Suite A, MD 100P  
Phoenix, Arizona 85251

Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

#### **MINIMUM SCOPE AND LIMITS OF INSURANCE:**

Contractor shall provide coverage with limits of liability not less than those stated below:

##### **A. Commercial General Liability ? Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate \$2,000,000

Products ? Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Blanket Contractual Liability ? Written and Oral \$1,000,000

Fire Legal Liability \$50,000  
Each Occurrence \$1,000,000

The policy shall be endorsed to include the following additional insured language: 'The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor'.

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### B. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: 'The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor'.

#### C. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$500,000

Disease ? Each Employee \$500,000

Disease ? Policy Limit \$1,000,000

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

#### ADDITIONAL INSURANCE REQUIREMENTS

The policies shall include, or be endorsed to include, the following provisions:

The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

#### A. Notice Of Cancellation

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to State of Arizona, Arizona Department of Transportation, Procurement Group, 1739 W. Jackson Street, Suite A, MD 100P, Phoenix, AZ 85007-3276 and shall be sent by certified mail, return receipt requested.

#### B. Acceptability Of Insurers

Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an A.M. Best? rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### C. Verification Of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized

by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to State of Arizona, Arizona Department of Transportation, Procurement Group, 1739 W. Jackson St., Suite A, MD 100P, Phoenix, AZ 85007-3276. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.

#### D. Subcontractors

Contractors? certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

#### E. Approval

Any modification or variation from the insurance requirements in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

#### F. Exceptions

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

#### **Inventory**

The State of Arizona has an ongoing requirement for the material indicated in this solicitation. It is an express condition of any award that a contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in contract cancellation.

#### **Licenses**

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

#### **Multiple Award**

The State has a large number and variety of potential using agencies at locations throughout Arizona. In order to assure that any ensuing contracts will allow the State to fulfill current and further requirements, the State reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of the State. The fact that the state may make multiple awards should be taken into consideration by each potential contractor.

#### **Non-Exclusive Contract**

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agencies delegated authority) or by the State Enterprise Procurement Service (EPS) office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

#### **Offshore Performance of Work Prohibited**

Due to security and identity protection concerns, all services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

#### **Ordering Process**

For the purposes of this contract, purchase orders are those that are issued by an eligible agency any of the following forms:

1. Hard copy, one time only or blanket (term type) type;
2. Electronically transmitted through facsimile equipment;
3. Electronically transmitted as an e-mail attachment;
4. Electronically transmitted through a contractor's Electronic Data Interchange (EDI) system or secured internet/web portal, i.e. those that provide electronic commerce assistance for the electronic submission of purchase orders, purchase order

tracking and reporting.

4.1. Such systems shall not allow for purchase orders to be placed for non-contract or excluded items.

4.2. Use of such systems shall be at the sole at the sole discretion of the eligible agency and all cost associated with set-up, maintenance and support shall be borne by the contractor.

5. Electronically through States or eligible agencies P-card programs.

This contract was awarded in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for competitive source selection have been met. A contract purchase order, initiated in accordance with the requirements contained herein, that cites the correct SCC contract number is the only document required for the agency to order and the contractor to deliver the material and /or service.

Any attempt to represent any material and/or service not specifically awarded, as being under is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

**Packing Slip**

Contractor shall produce a packing slip with each shipment to include, at a minimum, the contract number, item, price, and the quantity shipped. However, if item(s) are sent directly to awardee, pricing shall be omitted from packing slip.

**Post Award Meetings**

Upon award, any or all contractors shall be available to participate in one or more post award meeting(s) with State and Political Subdivision end-users and buyers.

The meetings will be used to discuss mutual contractual responsibilities and other performance related items.

**Price Adjustment**

The State may review a fully documented request for a price increase only after the contract has been in effect for six (6) months.

The State shall determine whether the requested price increase or an alternate option is in the best interest of the State. The price increase adjustment, if approved, will be effective upon acceptance by the State.

**Price Increase**

The requested for price increase shall be based upon a cost increase to the contractor that was clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. The State shall determine whether the requested price increase or an alternate option, is in the best interest of the state.

Written request by the contractor is required thirty (30) days in advance of any desired price change. The request shall provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been increased.
2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost increase.

Upon approval by the State, the contractor shall make available all electronic and hard copy catalog/price list updates to all eligible using agencies at no additional cost to the State.

**Price Reductions**

Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made to other customers. The state at its own discretion may accept a price reduction. The contractor shall request, in writing, a price reduction. The contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.
2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
3. Documentation showing that the published cost reductions have been offered to other distributors.

**Pricing**

Pricing for the resultant contract shall be determined by a discount from the published catalog(s)/brochure(s) in accordance with this paragraph and price sheet requirements. Indicate the basic discount offered and identify the catalog(s) to which the discount applies on the price sheet. Include Manufacturers Catalog. Upon request contractor shall, at no expense to the State, furnish catalog/brochure to each delivery point requesting the information, as well as updates as needed.

Contractor shall identify all rebateable premium lines and percentage of rebate on the space provided on the price sheets.

The contractor shall provide complete up to date product catalogs, reference materials and/or brochures/lists to all agencies being served under this contract.

The contractor shall provide a complete and up to date Line Card, describing all items available from contractor.

All prices, inclusive of discounts, shall be firm, fixed and shall include all labor, equipment, materials, products, freight (FOB Destination), and all other costs incidental to the products contracted (excluding applicable state and local taxes).

**Product Discontinuance**

In the event that a product or groups of products are discontinued by a manufacturer, the State at its sole discretion may allow the contractor to provide substitutes for the discontinued product(s) or allow the deletion of such products from the contract. The request may be submitted at any time during the contract period and shall be supplemented with the following information.

1. A formal announcement from the manufacturer stating that the product(s) have been discontinued.
2. Documentation from the manufacturer that cites the effected products by item number and description.
3. Documentation from the manufacturer that names the replacement product(s).
4. Documentation that provides clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;
5. Documentation confirming that the price for the replacement product(s) is the same as or less than the discontinued item.

Failure to supply any of the following information with the request may result in the state not considering the request.

Approval shall be in the form of a contract amendment and shall become effective on the date specified in the amendment. Upon approval by the state, the contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State.

**Revised or Replacement Catalog/Price lists**

The State may review a fully documented request to incorporate a revised or replacement catalog/brochure/price list. The request shall be submitted in writing and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request.

A. A declaration that affirms that the proposed catalog/brochures is one that:

- 1) Is a replacement or revision to the original, containing the same item groups as originally awarded;
- 2) Is regularly maintained by a manufacturer, distributor or contractor.
- 3) Is either published or otherwise available for inspection by customers.
- 4) Is one that states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

B. Pricing information, existing versus proposed, electronic and hardcopy formats that:

- 1) Identifies all products, by part number, SKU number, description and manufacturer that will experience increases from existing prices.
- 2) Displays a side-by-side comparison of pricing, existing vs. proposed increases.
- 3) Details the factors that were clearly unpredictable at the time of the original offer and that have a direct affect on the proposed increase. Newly published or revised catalog/brochures submitted without supplemental information may not be considered.
- 4) Identifies all products, by part number, SKU number, description and manufacturer that will experience decreases from existing prices.
  - a. Displays a side-by-side comparison of pricing, existing vs. proposed decreases.
  - b. The contractor shall also be obligated to pursue price decreases in accordance with the price decrease provision contained herein.

C. Product Information (deletions/additions) existing versus proposed, electronic and hardcopy formats that:

- 1) Identifies all discontinued products, by part number, SKU number, description and manufacturer that are either no longer being manufactured or are no longer available to the contractor.
- 2) Identifies all proposed product additions, by part number, SKU number, description and manufacturer
  - a. When pursuing product deletions or additions the contractor shall also supplement the request as required under product discontinuance new product provisions contained herein.

D. The State reserves the right to approve an entire catalog/brochure/price list, portions thereof or to exercise an alternate

option, whichever is deemed in the best interest of the State.

Approval shall be done in the form of a contract amendment, and shall become effective on the date specified in the amendment. Upon approval by the State, the contractor shall make available all electronic and hard copy catalog/brochure/price list updates to the State and all contract customers at no additional cost to the State.

#### **Safety Standards**

All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, The National Electric Code, and The National Fire Protection Association Standards.

#### **Sales Promotions**

In addition to decreasing contract pricing in accordance with the provision entitled price reductions, the contractor may conduct sales promotions involving specific products or groups of products specified herein for specified time periods. If electing to exercise this provision the contractor shall submit:

1. A formal request that identifies the affected contract product or product groups;
2. The promotional price vs. the existing contract price.
3. The start and end date of the sales promotion;

Approval shall be in the form of a contract amendment. Pricing shall be available to all eligible agencies through the dates specified in the request. Upon approval the contractor shall provide conspicuous notice of the promotion.

#### **Shipping F.O.B Statewide**

Prices shall be F.O.B. Destination to any delivery location in the State of Arizona and/or boarding states, delivered to the specified receiving point as required by the customer agency at the time of order. Contractor shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the contractor. The contractor shall file all claims for visible or concealed damage. The State will notify the contractor promptly of any damaged goods and shall assist the contractor in arranging for inspection.

#### **Expedited Shipping Terms**

The State or ordering agency shall be responsible for freight charges incurred for any items needing to be shipped overnight via air or mail. Freight shall be prepaid and added to the invoice and shall be identified as "FREIGHT FOR EXPEDITED ITEM". The order agency/political subdivision shall be the sole determiner of items needing to be expedited and the mode of transporting those expedited items. Prior authorization must be obtained from State personnel and noted on the invoice. The State will not be responsible for any in-bound freight incurred by the contractor.

#### **State Contract Show Availability**

As a statewide contractor, the supplier is eligible to participate in an exhibition of products and services for the state agency and eligible political subdivision personnel in a centralized event. The show has been in place since 1984 and regularly attracts over 130 booths and 500 state contract users.

#### **Term of Contract (Sole Option)**

The term of any resultant contract(s) for the Department shall commence on the date of contract execution and continue for one year, unless terminated, canceled, or extended as otherwise provided herein.

#### **Transition Period**

The contractor shall attend transition meetings with the previous contractor if deemed necessary by the State. The State reserves the right to permit the previous contractor to complete necessary work or tasks currently in progress to aid in the transition process.

#### **Usage Report**

The contractor shall furnish the State, upon request, a usage report delineating the acquisition activity governed by the contract upon request of the Agency, Department or Eligible Political Subdivision. The format of the report shall be approved by the State and shall disclose the quantity and the dollar value of each contract item by individual purchasing unit.

The format of the usage report is shown in attached Usage Report document.

The usage report shall be due at the end of each three month period of the contract term.

#### **Warranty (12 Months)**

The bidder warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.
2. That all items furnished hereunder shall conform to the requirements of this contract and shall be free from defects in design materials and workmanship.
3. The warranty period on workmanship and materials shall be based on a minimum of twelve (12) months from the time of

delivery.

All bidders shall indicate on a separate written sheet that is submitted with their bid the exact conditions, limitations and duration of their warranty. As a minimum the warranty provided shall conform to the requirements stated herein. If the contractor offers, as their standard, a warranty that exceeds these minimum requirements, that warranty will take the place of the minimum requirements stated herein.

# Contract

Solicitation # SCC050001-A1

## Uniform Instructions

### 1 Definition of Terms

As used in these Instructions, the terms listed below are defined as follows:

#### 1.2 Contract

the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers, and any Solicitation Amendments or Contract Amendments and any terms applied by law.

#### 1.3 Contract Amendment

a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

#### 1.4 Contractor

any person who has a Contract with the State

#### 1.5 Days

calendar days unless otherwise specified.

#### 1.6 Exhibit

any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation

#### 1.7 Offer

bid, proposal or quotation.

#### 1.8 Offeror

a vendor who responds to a Solicitation.

#### 1.9 Procurement Officer

the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

#### 1.10 Solicitation

an Invitation for Bids ('IFB'), a Request for Proposals ('RFP'), or a Request for Quotations ('RFQ').

#### 1.11 Solicitation Amendment

a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.

#### 1.12 Subcontract

means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

#### 1.13 State

the State of Arizona and Department or Agency of the State that executes the Contract.

### 2 Inquiries

Inquiries

#### 2.1 Duty to Examine

It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.

#### 2.2 Solicitation Contact Person

Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation, shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

#### 2.3 Submission of Inquiries

The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.

#### 2.4 Timeliness

Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

#### 2.5 No Right to Rely on Verbal Responses

An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the



solicitation.

**2.6 Solicitation Amendments**

The Solicitation shall only be modified by a Solicitation Amendment.

**2.7 Pre–Offer Conference**

If a pre–Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

**2.8 Persons With Disabilities**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

**3 Offer Preparation**

Offer Preparation

**3.1 Forms: No Facsimile, Telegraphic or Electronic Mail Offers**

Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids, unless the solicitation indicates otherwise.

**3.2 Typed or Ink; Corrections**

The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.

**3.3 Evidence of Intent to be Bound**

The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.

**3.4 Exceptions to Terms and Conditions**

All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.

i. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected. [ALL]

ii. Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.

**3.5 Subcontracts**

Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.

**3.6 Cost of Offer Preparation**

The State will not reimburse any Offeror the cost of responding to a Solicitation.

**3.7 Solicitation Amendments**

Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed (or acknowledgment for electronic submission, when authorized) copy of a Solicitation Amendment may result in rejection of the Offer.

**3.8 Federal Excise Tax**

The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.

**3.9 Provision of Tax Identification Numbers**

Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.

**3.10 Employee Identification**

Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with

appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

**3.11 Identification of Taxes in Offer**

The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation when applicable, the tax rate and amount shall be identified on the price sheet. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.

**3.12 Disclosure**

If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

**3.13 Solicitation Order of Precedence**

In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

3.13.1 Special Terms and Conditions;

3.13.2 Uniform Terms and Conditions;

3.13.3 Statement or Scope of Work;

3.13.4 Specifications;

3.13.5 Attachments;

3.13.6 Exhibits;

3.13.7 Special Instructions to Offerors;

3.13.8 Uniform Instructions to Offerors. 3.13.9 Other documents referenced or included in the Solicitation.

**3.14 Delivery**

Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

**4 Submission of Offer**

Submission of Offer

**4.1 Sealed Envelope or Package**

Except for electronic submissions, when authorized, each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.

**4.2 Offer Amendment or Withdrawal**

An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

**4.3 Public Record**

All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.

**4.4 Non-collusion, Employment, and Services**

By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:

4.4.1 i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

4.4.2 ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

**5 Evaluation**

Evaluation

1. Well-defined, comprehensive approach and methodology

2. Administration & Support (including Statewide Coverage)

3. Quality, Workmanship and Warranty of Products/Packaging

4. Proposed Costs (including Discount Programs)

5. Past services of similar scope (including references)

- 6. Overall responsiveness to the RFP
- 7. Cost

**5.1 Unit Price Prevails**

In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

**5.2 Taxes**

Arizona transaction privilege and use taxes shall not be considered for evaluation.

**5.3 Late Offers**

An Offer submitted after the exact Offer due date and time shall be rejected.

**5.4 Disqualification**

An Offeror (including any of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.

**5.5 Offer Acceptance Period**

An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred–twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred–twenty (120) days from the Best and Final Offer due date.

**5.6 Waiver and Rejection Rights**

Notwithstanding any other provision of the Solicitation, the State reserves the right to:

5.6.1 Waive any minor informality;

5.6.2 Reject any and all Offers or portions thereof; or

5.6.3 Cancel the Solicitation.

**6 Award**

Award

**6.1 Number or Types of Awards**

The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, 'all or none' Offers shall be rejected.

**6.2 Contract Inception**

An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.

**6.3 Effective Date**

The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

**7 Protests**

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

7.1 The name, address and telephone number of the protester;

7.2 The signature of the protester or its representative;

7.3 Identification of the purchasing agency and the Solicitation or Contract number;

7.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and

7.5 The form of relief requested.

**8 Comments Welcome**

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

# Contract

Solicitation # SCC050001-A1

## Uniform Terms and Conditions

### 1 Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

#### 1.1 Attachment

any item the Solicitation requires the Offeror to submit as part of the Offer.

#### 1.2 Contract

the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

#### 1.3 Contract Amendment

a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

#### 1.4 Contractor

any person who has a Contract with the State.

#### 1.5 Days

calendar days unless otherwise specified

#### 1.6 Exhibit

any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

#### 1.7 Gratuity

a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

#### 1.8 Materials

all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

#### 1.9 Procurement Officer

the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

#### 1.10 Services

the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

#### 1.11 Subcontract

any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

#### 1.12 State

the State of Arizona and Department or Agency of the State that executes the Contract.

#### 1.13 State Fiscal Year

the period beginning with July 1 and ending June 30,

### 2 Contract Interpretation

Contract Interpretation

#### 2.1 Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

#### 2.2 Implied Contract Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

#### 2.3 Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;

2.3.2 Uniform Terms and Conditions;

2.3.3 Statement or Scope of Work;

2.3.4 Specifications;

2.3.5 Attachments;

2.3.6 Exhibits;

2.3.7 Documents referenced or included in the Solicitation.

#### 2.4 Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

**2.5 Severability**

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

**2.6 No Parole Evidence**

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

**2.7 No Waiver**

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**3 Contract Administration and Operation**

Contract Administration and Operation.

**3.1 Records**

Under A.R.S. § 35–214 and § 35–215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other 'records' relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

**3.2 Non-Discrimination**

The Contractor shall comply with State Executive Order No. 99–4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

**3.3 Audit**

Pursuant to ARS § 35–214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

**3.4 Facilities Inspection and Materials Testing**

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

**3.5 Notices**

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

**3.6 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

**3.7 Property of the State**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

**3.8 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ('Intellectual Property'), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s).

Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

**4 Costs and Payments**

Costs and Payments

#### **4.1 Payments**

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

#### **4.2 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

#### **4.3 Applicable Taxes**

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

#### **4.4 Availability of Funds for the Next State Fiscal Year**

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

#### **4.5 Availability of Funds for the Current State Fiscal Year**

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the contractor;

4.5.2 Cancel the Contract

4.5.3 Cancel the contract and re-solicit the requirements.

### **5 Contract Changes**

Contract Changes

#### **5.1 Amendments**

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

#### **5.2 Subcontracts**

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

#### **5.3 Assignment and Delegation**

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

### **6 Risk and Liability**

Risk and Liability

#### **6.1 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

#### **6.2 Indemnification**

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable

attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers.'

### **6.3 Indemnification – Patent and Copyright**

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41–621 and § 35–154, this section shall not apply.

### **6.4 Force Majeure**

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term 'force majeure' means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions–intervention–acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified–return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

### **6.5 Third Party Antitrust Violations**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## **7 Warranties**

Warranties

### **7.1 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

### **7.2 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

### **7.3 Fitness**

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

### **7.4 Inspection/Testing**

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

### **7.5 Year 2000**

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of force majeure shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of force majeure shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

### **7.6 Compliance With Applicable Laws**

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

### **7.7 Survival of Rights and Obligations after Contract Expiration or Termination**

7.7.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## **8 State's Contractual Remedies**

State's Contractual Remedies

### **8.1 Right to Assurance**

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

### **8.2 Stop Work Order**

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

### **8.3 Non-exclusive Remedies**

The rights and the remedies of the State under this Contract are not exclusive.

### **8.4 Nonconforming Tender**

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or



remedy available to it.

#### **8.5 Right of Offset**

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

#### **9 Contract Termination**

Contract Termination

##### **9.1 Cancellation for Conflict of Interest**

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

##### **9.2 Gratuities**

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

##### **9.3 Suspension or Debarment**

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

##### **9.4 Termination for Convenience**

The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

##### **9.5 Termination for Default**

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

##### **9.6 Continuation of Performance Through Termination**

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

#### **10 Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

#### **11 Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

## Contract

Solicitation # SCC050001-A1

### Offer

#### Tax Information

Arizona Transaction (Sales) Privilege Tax License No. 07536452W  
Federal Employer Identification No. 860616807

#### Location Information

Supplier Number: 4804  
Company Name: SNYDER PROMOTIONAL PRODUCTS  
Address: 1043 E MISSOURI AVE  
PHOENIX, AZ 85014

#### Clarification Information

Name: VICKI OR PAUL SNYDER  
Phone: (602) 265-8818 Fax: (602) 265-1632

#### Signature

Name: PAUL SNYDER Date: 5/18/05 7:36:19 AM  
Title: VP  
Signature: \_\_\_\_\_

Status: Accepted

#### Certification

### Acceptance

Award Date TBD

## Contract

**Solicitation # SCC050001-A1**

### Line Items

LI #	CM Code # CM Code Item #	Commodity Code Description Commodity Code Item Description	Manufacturer	Pricing	Qty	%	Unit Price	Ext Price
2	0080-0065 0080-0065-0002	Service Awards, Specialty Type Recognition Items, Percentage Off Catalog/List Price.		DLP	1	0	\$0.00	\$0.00